

GETTING THE DEAL THROUGH®

# Franchise

in 33 jurisdictions worldwide

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## Overview

- 1 What forms of business entities exist that would be relevant to the typical franchisor?

The typical franchisor may choose to operate its business as a sole proprietorship, partnership, limited liability partnership or a company.

A foreigner who is not a permanent resident of Singapore, wishing to set up a business in Singapore, must first apply for an employment pass under the Singapore Immigration Regulations. Once his or her application has been approved, he or she will be issued with an 'approval-in-principle' letter to enable him or her to register the business with Accounting & Corporate Regulatory Authority (ACRA).

- 2 What laws and agencies govern the formation of business entities?

The government body that deals with the formation of business entities is ACRA. The laws governing their formation are as follows:

- business – Business Registration Act, chapter 32;
- companies – Companies Act, chapter 50; and
- limited liability partnership – Limited Liability Partnership Act, chapter 163A.

- 3 Provide an overview of the requirements for forming and maintaining a business entity.

### Sole proprietorship

A sole proprietorship is a business owned by one person or one company, and there are no partners. The sole proprietor is able to make all decisions concerning the business. The sole proprietor may sue or be sued as an individual.

If the sole proprietor is a foreigner (who is not ordinarily resident or a Singapore PR) or a foreign company, it is required to have a local manager. A person is deemed not to be ordinarily resident if he or she does not have a local address in Singapore. The local manager must be over 21 years old and must be either be a Singapore citizen, permanent resident, an employment pass-holder, an approval-in-principle employment pass-holder or a dependant pass-holder. Sole proprietors are not required to audit their accounts or file annual returns with ACRA.

The sole proprietorship must first be registered with ACRA before carrying on business in Singapore. A foreign company may only register a business firm once it has registered itself under the Companies Act.

### Partnership

The business may be co-owned by two or up to 20 partners. If there are more than 20 partners, the business entity must be registered as a company under the Companies Act, chapter 50.

Partnerships are similar to sole proprietorships in that the partners must appoint a local manager if none of the partners is 'ordinarily resident' in Singapore; they are required to be registered with ACRA and they do not need to audit their accounts or file annual returns with ACRA.

### Limited liability partnerships (LLPs)

A LLP is a relatively new vehicle for doing business in Singapore. LLPs allow the partners to operate the partnership while having a separate legal identity that is similar to that of a private limited company. As such, the LLP is seen as a body corporate and has a separate legal personality from its constituent partners.

A LLP is still required to be registered with ACRA.

### Company

A company is a business entity registered under the Companies Act, chapter 50. A company has a legal personality: it can sue and be sued in its own name. A company may either be registered as a public or a private company.

A company may be incorporated by any person above the age of 21. The company may have only one director provided that the director is ordinarily resident in Singapore.

If a foreigner wishes to act as a local director of a company, he or she can apply for an EntrePass or approval-in-principle letter from the Work Pass Division of the Ministry of Manpower (MOM) under the EntrePass Scheme.

A company is required to be registered with ACRA.

- 4 What restrictions apply to foreign business entities and foreign investment?

There are generally, no restrictions for foreign business entities and foreign investment in Singapore.

- 5 Briefly describe the aspects of the tax system relevant to franchisors. How are foreign businesses and individuals taxed?

### Sole proprietorship

Sole proprietors carry on business on his or her own behalf. They are therefore self-employed and pay income tax on the profits made by the business.

### Partnership

The profit and loss is shared between partners, and each partner will be taxed in each individual partner's name at personal income tax rates.

### LLP

For income tax purposes, a LLP will be treated as a partnership and not as a separate legal entity. This means that a LLP will not be

chargeable to tax at the entity level. Instead, each partner will be taxed on his, her or its share of the income from the LLP. Where the partner is an individual, his or her share of income from the LLP will be taxed based on his or her personal income tax rate. Where a partner is a company, its share of income from the LLP will be taxed at the tax rate for companies.

For income tax purposes, the filing procedure of a LLP is similar to that of a partnership.

### Company

A company is taxed at a flat rate on its chargeable income regardless of whether it is a local or foreign company.

- 6 Are there any relevant labour and employment considerations for typical franchisors? What is the risk that a franchisee or employees of a franchisee could be deemed employees of the franchisor? What can be done to reduce this risk?

There are no specific laws in relation to labour and employment considerations for typical franchisors. Employees of a franchisee will generally not be deemed employees of a franchisor if the franchisee is appropriately structured and documented.

- 7 How are trademarks and know-how protected?

Trademarks generally are protected under the Trade Marks Act (chapter 332), and know-how is protected by confidentiality provisions in the franchise agreement or by entering into a separate confidentiality agreement.

- 8 What are the relevant aspects of the real estate market and real estate law?

The real estate market and real estate law only apply to franchisors if they wish to lease a property in Singapore to carry out operations of their franchise.

### Laws and agencies that regulate the offer and sale of franchises

- 9 What is the legal definition of a franchise?

There is no specific Act governing franchises in Singapore. As such, there is no legal definition of a franchise. However, the Franchising and Licensing Authority (Singapore) (FLA) has defined franchising as:

*Franchising is an arrangement in which a party (the franchisor) has developed a way of running a business successfully, licenses the rights to operate that business format, under its trademark or name, to another party (the franchisee). The business arrangement involves a formal legal contract between the franchisor and franchisee and continual assistance to the franchisee to run the business on a predetermined basis.*

- 10 Which laws and government agencies regulate the offer and sale of franchises?

There are no laws and government agencies that regulate the offer and sale of franchises.

The FLA is Singapore's national franchise body and its mission is to nurture and develop Singapore's franchise industry. Companies can choose to become members of the FLA. By being a member of FLA, they are required to comply with the FLA's Code of Ethics.

- 11 Describe the relevant requirements of these laws and agencies.

The Code of Ethics contains provisions on misleading promotion, full information on investments requirements, disclosure, legal advice, contracts regarding existing franchisees, limitation on use of other's trademarks, proper selection of franchisees, provision of proper training, business guidance, accessibility of franchisor, transferability of franchise, standards of conduct, notice of breach and time of remedy, termination with good cause and dispute resolution.

- 12 What are the exemptions and exclusions from any franchise laws and regulations?

There are no exemptions and exclusions from any franchise laws and regulations.

- 13 In the case of a sub-franchising structure, who must make pre-sale disclosures to sub-franchisees? If the sub-franchisor must provide disclosure, what must be disclosed concerning the franchisor and the contractual or other relationship between the franchisor and the sub-franchisor?

The Code of Ethics does not provide any specific requirement for pre-sale disclosures to sub-franchisees

- 14 What is the compliance procedure for making pre-contractual disclosure in your country? How often must the disclosures be updated?

The Code of Ethics states that the disclosure document should be provided at least seven days prior to the execution of the franchise agreement. The Code of Ethics does not provide a requirement for the disclosures to be updated.

- 15 What information must the disclosure document contain?

The disclosure document should contain details of the current operations, investments, performance records and any other information reasonably required by the franchisee that are material to the franchise relationship that includes balance sheets and profit and loss statements.

- 16 How do the relevant government agencies enforce the disclosure requirements?

The FLA administers the Code of Ethics through its Executive Committee.

- 17 What actions can franchisees take to obtain relief for violations of disclosure requirements? What are the legal remedies for such violations? How are damages calculated? If the franchisee can cancel or rescind the franchise contract, is the franchisee also entitled to reimbursement or damages?

Aside from the dispute resolution mechanisms found in the Code of Ethics, the franchisees can also commence legal proceedings against the franchisor if it is able to make out a cause of action.

- 18 In the case of sub-franchising, how is liability for disclosure violations shared between franchisor and sub-franchisor? Are individual officers, directors and employees of the franchisor or the sub-franchisor exposed to liability? If so, what liability?

If a sub-franchisor misrepresents the situation, then the franchisor should not be held liable. The individual officers, directors and

employees of the franchisor or the sub-franchisor may be personally liable for any misrepresentations made.

- 19 In addition to any laws or government agencies that specifically regulate offering and selling franchises, what are the general principles of law that affect the offer and sale of franchises? What other regulations or government agencies or industry codes of conduct may affect the offer and sale of franchises?

There are no other relevant regulations or government agencies or industry codes of conduct that may affect the offer and sale of franchises.

- 20 What other actions may franchisees take if a franchisor engages in fraudulent or deceptive practices in connection with the offer and sale of franchises? How does this protection differ from the protection provided under the franchise sales disclosure laws?

If the franchisor engages in fraudulent or deceptive practices, the franchisee may bring a civil action against the franchisor for fraudulent misrepresentation. The burden of proof is on the franchisee to show that the franchisor knew or believed that the statement made was wrong and that the franchisee entered into the agreement based on the franchisor's false statement and as a result of the false statement the franchisee suffered loss.

#### Legal restrictions on the terms of franchise contracts and the relationship between parties involved in a franchise relationship

- 21 Are there specific laws regulating the ongoing relationship between franchisor and franchisee after the franchise contract comes into effect?

The Code of Ethics and general principles of contract law will apply.

- 22 Do other laws affect the franchise relationship?

No.

- 23 Do other government or trade association policies affect the franchise relationship?

No.

- 24 In what circumstances may a franchisor terminate a franchise relationship? What are the specific legal restrictions on a franchisor's ability to terminate a franchise relationship?

The franchise agreement would usually stipulate how and when the agreement shall be terminated by parties. Further, if there is a fundamental breach of contract by the franchisee, the franchisor may terminate the agreement under the general common law or contractual principles.

- 25 In what circumstances may a franchisee terminate a franchise relationship?

The franchise agreement would usually stipulate how and when the agreement is to be terminated by the franchisee such as when the franchisor is insolvent or breaches the franchise agreement.

Similarly, if there is a fundamental breach of contract by the franchisor, the franchisee may terminate the agreement under general common law or contractual principles.

#### Update and trends

According to Lim Hwee Hua, Singapore Minister of State for Finance and Transport, growth for the franchising business in Singapore continues to be promising. There are over 420 franchise systems and more than 30,000 franchisees operating in Singapore. The annual turnover is S\$5.48 billion (approximately US\$3.81 billion). A large number of franchised brands are related to the food and beverage industry; however, other sectors such as education and childcare are becoming an increasing trend.

- 26 May a franchisor refuse to renew the franchise agreement with a franchisee? If yes, in what circumstances may a franchisor refuse to renew?

The franchise agreement may be renewed if there is a provision in the agreement that allows the franchise to be renewed. However, if there is no provision in the agreement, the franchisor may choose not to renew the franchise agreement.

- 27 May a franchisor restrict a franchisee's ability to transfer its franchise or restrict transfers of ownership interests in a franchisee entity?

The franchise agreement may be drafted to provide for the above if the franchisor wishes to restrict the franchisee's liability to transfer its franchise or to restrict transfers of ownership interests.

- 28 Are there laws or regulations affecting the nature, amount or payment of fees?

There are no laws or regulations affecting the nature, amount or payment of fees.

- 29 Are there restrictions on the amount of interest that can be charged on overdue payments?

There are no specific restrictions on the amount of interest that can be charged on overdue payments.

- 30 Are there laws or regulations restricting a franchisee's ability to make payments to a foreign franchisor in the franchisor's domestic currency?

Apart from withholding tax, there are no laws or regulations restricting a franchisee's ability to make payments to a foreign franchisor in the franchisor's domestic currency.

- 31 Are confidentiality covenants in franchise agreements enforceable?

Yes, they are enforceable.

- 32 Is there a general legal obligation on parties to deal with each other in good faith? If so, how does it affect franchise relationships?

There is no general legal obligation on parties to deal with each other in good faith.

- 33 Must disclosure documents and franchise agreements be in the language of your country?

There is no specific requirement.

34 What restrictions are there on provisions in franchise contracts?

There are generally no restrictions on the provisions in franchise contracts except that it should not be anti-competitive.

35 Describe the aspects of competition law in your country that are relevant to the typical franchisor. How are they enforced?

Competition law is governed by the Singapore Competition Act, chapter 50B. The Act promotes healthy competitive markets by prohibiting certain business practices that restrict competition in the market such as price-fixing, bid-rigging, market-sharing and abuse of market power.

The Competitions Commission of Singapore (CCS) enforces

the Competition Act. The CCS can therefore order that the anti-competitive activity be ceased and that financial penalties be imposed.

36 Very briefly describe the court system. What types of dispute resolution procedures are available relevant to franchising?

Franchise disputes are generally heard in the civil courts. The amount claimed will determine which court the matter will be commenced in. If the claim amount is for a sum not exceeding S\$60,000 (approximately US\$41,800), the matter will be dealt in the magistrate courts. Claims worth between S\$60,000 and S\$250,000 (approximately US\$147,000) are dealt with in the district courts, and claims above S\$250,000 are dealt with in the High Court.

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